

### **REMARKS/ARGUMENTS**

Applicant's attorney gratefully acknowledges the Examiner's courtesy in speaking with the Applicant's attorney, Stephen Nipper, on November 7, 2006, regarding Claims 1 and 10. During the conversation it was agreed that certain amendments to claim 1, which would clarify the relationship of motion between the lever and the jaws, would place claim 1 and all depending claims in condition for allowance. Consistent with this conversation, Applicant herein submits the following amendment to claim 1 and response regarding claim 1 for the Examiner's consideration. Although the parties were not able to reach an agreement regarding claim 10, the following amendment and response is hereby submitted.

#### *Amendments in General*

Claim 1 has been amended to further clarify the relationship of motion between the lever and the jaws. Specifically, claim 1 has been amended to clarify that the "lever moves to open and to close said jaws, wherein the movement of the jaws defines a plane, wherein the lever moves in a plane that is generally perpendicular to said plane of jaw movement." Claim 10 has similarly been amended to clarify the relationship of motion between the articulating device and the base portion. Specifically, that the articulating device moves in a second plane generally perpendicular to the plane of movement of the base portion. Claim 10 has also been amended to clarify that the device is for stretching an endless loop of resiliently stretchable material.

#### *Claim Rejections – 35 U.S.C. § 112*

The Examiner has rejected claims 1 through 4, 6, 8, and 9 under 35 U.S.C. § 112, second paragraph, for the reason that the claims failed to particularly point out and distinctly claim the subject matter that Applicant regards as the invention. Specifically, the Examiner notes that claim 1 recites "in a generally downward direction to close said jaws and to open said jaws" as being the nature of the lever motion relative to the jaw motion while the disclosure suggests that downward motion opens said jaws and upward motion closes said jaws. The referenced quote of claim 1 as been deleted from claim 1 as amended. Accordingly, claim 1 as amended no longer violates 35 U.S.C. § 112, second paragraph.

#### *Claim Rejections – 35 U.S.C. § 102*

"An applicant for a patent is entitled to the patent unless the application fails to meet the requirements established by law. It is the Commissioner's duty (acting through the examining officials) to determine that all requirements of the Patent Act are met. The burden is on the Commissioner to establish that the applicant is not entitled under the law to a patent . . . In rejecting an application, factual determinations by the PTO must be based on a preponderance of

the evidence, and legal conclusions must be correct.” *In re Oetiker*, 977 F.2d 1443, 1449, 24 USPQ2d 1443, 1447, 24 USPQ2d at 1447 (Fed. Cir. 1992) (Plager, J., concurring). Further, “[t]he precise language of 35 USC 102 that ‘a person shall be entitled to a patent unless,’ concerning novelty and unobviousness, clearly places a burden of proof on the Patent Office which requires it to produce the factual basis for its rejection of an application under sections 102 and 103.” *In re Warner*, 379 F.2d 1011, 1016, 154 USPQ 173 (CCPA 1967), *cert. denied*, 389 U.S. 1057, *reh'g denied*, 390 U.S. 1000 (1968).

The Examiner rejected claims 1 through 3, 8 through 13, and 19 under 35 U.S.C. § 102(b) as being anticipated by the apparatus for removing swine tails described in U.S. Patent No. 4,572,179 (the Teitelbaum patent).

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). “The identical invention must be shown in as complete detail as contained in the . . . claim.” *Richardson v. Suzuki Motor Co.*, 828 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). MPEP § 2131.

Claim 1 has been amended to specify that the lever moves in a plane that is generally perpendicular to the plane of movement of the jaws. Claims 2, 3, 8, 9, and 19 depend from claim 1; therefore, they include the limitation that the lever moves in a plane perpendicular to the plane of jaw movement.

Teitelbaum describes an apparatus for removing swine tails in which the jaws move in a plane parallel to the plane in which the handles move. Therefore, Teitelbaum does not include the element of claim 1 of having a lever that moves in a plane perpendicular to the plane of jaw movement. Thus, Applicant respectfully contends that Teitelbaum does not anticipate claims 1 through 3, 8, 9, or 19.

Claim 10, like claim 1, has been amended to specify the relative perpendicular movement of the noted parts of the device, i.e., that the articulating device moves in a plane generally perpendicular to the plane of movement of the base portion. Claims 11 through 13 depend from claim 10; therefore, they include the limitation of the articulating device moving in a plane generally perpendicular to the plane of movement of the base portion.

As previously discussed, the Teitelbaum patent makes no mention of perpendicular movement, particularly of an articulating device moving in the plane perpendicular to the plane in which a base portion moves. Accordingly, Teitelbaum does not include the element of claim 10 of having an articulating device moving in a plane of movement perpendicular to the plane of movement of the base portion. Thus, Applicant respectfully contends that Teitelbaum does not anticipate claim 10 or the claims that depend therefrom, i.e. claims 11 through 13.

***Claim Rejections - 35 U.S.C. § 103***

The Examiner rejected Claims 6 and 17 under 35 U.S.C. § 103(a) as being unpatentable (obvious) over Teitelbaum. The Examiner contends that it would have been obvious to a person having ordinary skill in the art, to modify Teitelbaum's lever and handle configuration to include a brace arm for the advantage stated in the application.

Section 706.02(j) of the MPEP sets forth the requirements for establishing the *prima facie* case of obviousness as follows:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on the applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

In this case, Teitelbaum does not teach or suggest all the claim limitations of claims 6 and 17.

Claim 6 depends from claim 1, therefore, claim 6 includes the limitation of claim 1 as amended. Specifically, claim 6 includes the limitation that the plane in which the jaws move is perpendicular to the plane in which the lever moves. As previously discussed, Teitelbaum makes no mention of perpendicular movement. Accordingly, Teitelbaum does not teach or suggest all the claim limitations of claim 6 in light of the amendment to claim 1. Likewise, claim 17 depends from claim 13, which depends from claim 10. Accordingly, claim 17 includes the limitation of claim 10 that the articulating device moves in a plane generally perpendicular to the plane of movement of the base portion. Again, Teitelbaum makes no mention of perpendicular movement. Accordingly, Teitelbaum does not teach or suggest all the claim limitations of claim 17 in light of the amendment to claim 10.

Examiner Timothy J. Neal  
Serial # 10/772,763

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***Conclusion***

All changes herein add no new matter.

If the Examiner feels it would advance the application to allowance or final rejection, the Examiner is invited to telephone the undersigned at the number given below.

Reconsideration and Allowance of the application as amended is respectfully requested.

DATED this 13<sup>th</sup> day of April, 2007

Very respectfully,

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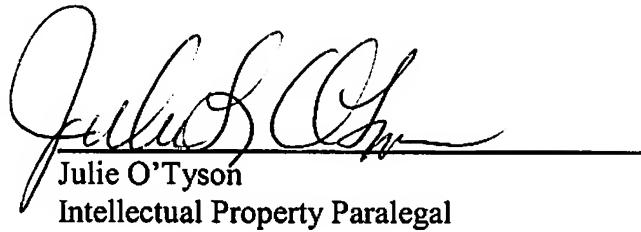
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